

BC VEGETABLE MARKETING COMMISSION

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April 4, 2002

US Food and Drug Administration
Dockets Management Branch (HFA-305)
5630 Fishers Lane, Rom 1061
Rockville, Maryland
20852

Comments of the British Columbia Vegetable Marketing "Commission" on rules proposed by the Department of Health and Human Services' Food and Drug Administration (FDA) under the [U.S.] *Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Bioterrorism Act)*.

Docket No.'s - 02N-0278 and 02N-0277

The Commission appreciates the opportunity to provide comments to Notices 02N-0728 and 02N-0277 published by the U.S. Food and Drug Administration "FDA". It is our preference to respond to these Notices jointly rather than separately as the issues arising are somewhat interrelated.

The Commission

The Commission is a non-profit regulatory body established pursuant to the Natural Products Marketing (BC) Act with promulgated Federal authority to regulate vegetables produced in BC and destined for export trade.

All producers and marketers of regulated vegetables produced in BC are required to be licensed by the Commission. Currently, there are over 350 licensed producers marketing through seven licensed marketing agencies of the Commission. These producers currently produce approximately US\$200 million of vegetables annually, of which 75% are destined for the U.S. market.

In addition, many of these licensed agencies import like product from the U.S. and Mexico to complement seasonal shortfalls. In total, bi-lateral trade conducted by our marketing agencies is in excess of US\$250 million.

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The Products

The Commission regulates the production and marketing of over 20 different vegetable commodities. Most of these commodities, like greenhouse grown tomatoes, cucumbers, peppers and field vegetables are highly perishable. Perishable commodities like those described have a narrow window of opportunity in which to be harvested, graded and packed, transported, warehoused, purchased by the consumer and eventually consumed. When marketing these vegetables, a sophisticated distribution system is required.

Freight Logistics

All of our licensed marketing agencies that engage in export and import opportunities are located within 20 minutes of the U.S. border, and all, or almost all, of BC's vegetable exports into the U.S. are by truck carrier. These shipments often consist of multiple commodities, originating from multiple greenhouses or farms, and these commodities are often supplied in various packages, often within the same shipment. Transportation time by truck to a U.S. destination can range anywhere from as little as three hours to as long as three days.

The Changing Market

Retail and food service consolidation within the U.S. food industry has resulted in increased pressure on suppliers of perishable commodities. In an effort to improve quality, reduce claims, and reduce overheads associated with warehousing inventory, the food industry has moved to "just in time delivery" models. The success of these new food distribution models is predicated on suppliers being able to react quickly to market requirements. Orders are regularly altered by the buyer right up until the time of shipment to ensure opportunities are maximized at the retail and food service level. It is our agencies responsibility as suppliers to meet these challenges in accordance with our customer's demands within the U.S.

Bi-lateral Trade

As we are an industry that relies on bi-lateral trade, it is important that the efficient movement of perishable product between Mexico, the U.S. and Canada is maintained. We understand, appreciate and support the need of the U.S. to maintain security of their food supply and support the efforts to do so in a manner that ensures commerce is not needlessly impacted. However, in addition to the concerns expressed below, we are further concerned that pressure to implement a reciprocal approach may be forthcoming on U.S. exports into Canada. If this should happen, bi-lateral trade will have been needlessly impacted for what must be considered very low risk cross border transactions. We encourage the FDA to adopt mechanisms that will achieve their goals while maintaining a healthy business environment for the uniquely integrated business relationships in both countries.

Submission of the Canadian Produce Marketing Association

We have read and essentially adopt the submission of the Canadian Produce Marketing Association but would like to further highlight some of our concerns.

DOCKET NO. 02N-0278

Prior Notice

The "one size fits all" minimum time period is not flexible enough for our exporting agencies that are located within minutes of the U.S. border and transport virtually 100% by truck carrier. Within the B.C. industry, it is common to receive orders in the afternoon, load trucks in the evening including last minute order adjustments, and then ship after midnight. Under the Prior Notice provision, it is our understanding that if notification is not provided by 12:00 noon, then shipments cannot occur until after 12:00 midnight the following day, a full 36 hours after orders are normally received and 24 hours after normal shipment requirements. If adopted, this minimum time period will result in needless delays to a time sensitive distribution system of perishable product that is required between U.S. importers and Canadian exporters.

Our industry understands the aim of the Prior Notice requirement but logistics cannot support a requirement beyond a four hour Prior Notice period with product quantity updates two hours prior to arrival time.

Registration of Facilities and Canadian Farms

It is our understanding that export facilities along with participating farms will be required to be registered. Export shipments, more often than not, are compiled using commodities from a combination of farms. It is not clear how the FDA will require this information on each notification, but it is fair to say that this will be problematic and administratively burdensome.

Use of FDA Codes

We do not support the establishment of an additional coding system. We would support a streamlined system based on the current HS codes that are already provided to U.S. Customs rather than develop an additional set of codes that will create confusion, mistakes and essentially duplicate information.

DOCKET NO. 02N-0277

Submission of Notice

Under Section 1.285 the proposed rule would require prior notice to be submitted by a "purchaser or importer who resides or maintains a place of business in the U.S., or an

agent who resides or maintains a place of business in the U.S., acting on behalf of the U.S. purchaser or importer”.

The Canadian exporter of record is essentially responsible until the product is received and inspected by the importer. Only then does the “title change hands”. As it is the intent of the FDA to require the as much of a notice period as possible, it would make sense to eliminate the need for an additional link in the “chain”. It will be problematic, if not impossible to comply with the Notice period as it is now proposed, without the exporter's reliance on the importers ability to file the Notice within the allotted time.

It would be much more pragmatic and efficient if the Notice was filed by the exporter. After all, it will be the exporter who will know the soonest, with the highest degree of accuracy, what is correctly loaded onto the truck destined for the U.S. This would require less time, create fewer errors in the Notice and result in a more streamlined approach.

Summary

It is unfortunate that current world events are requiring changes to the import and export relationship between our countries. However, we would like to continue to work with the FDA through the government of Canada, the Canadian Produce Marketing Association and the Canadian Horticulture Council to ensure that whatever requirements are imposed, are efficient yet non-disruptive to the business relationships and bi-lateral trade within our industry.

Yours truly,



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